STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 15, 2005
v	No. 251652 Kent Circuit Court
JONATHON ELSEY CURL, a/k/a JONATHON ELSBY CURL, Defendant-Appellant.	LC No. 03-004118-FH

Before: Murray, P.J., and Markey and O'Connell, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct, MCL 750.520d(1)(b)(sexual penetration involving force or coercion), and assault with intent to sexually penetrate, MCL 750.520g(1). He was sentenced as a third habitual offender, MCL 769.11, to concurrent terms of thirteen to thirty and thirteen to twenty years' imprisonment for those respective convictions. Defendant appeals as of right. We affirm.

Defendant challenges the sufficiency of the evidence. Regarding the CSC III conviction, he noted that the complainant reported penile penetration to the investigating officer immediately after the crime and at the preliminary examination, but denied that there was such penetration at trial. Regarding the second conviction, defendant acknowledges that the complainant said he grabbed her arm and took her into the bedroom. However, he asserts that no other witness observed this and that there was no evidence of an assault.

We note that the testimony of the complainant, who suffered from a mental deficit, was confused at trial. She alternatively said that there was and was not penile penetration. She may have been distinguishing between penetration of the labia and penetration of the vagina. We need not reach that question. MRE 801(d)(2)(A) provides that a statement is not hearsay if it is offered against a party and is that party's own statement. In *People v Lundy*, 467 Mich 254, 257; 650 NW2d 332 (2002), the Court noted that party admissions are specifically excluded from hearsay and, thus, are admissible as both impeachment and substantive evidence under MRE 801(d)(2). Since defendant was a party and admitted to a detective that he had penetrated the complainant's labia, there was substantive probative evidence of this element of the crime. Defendant asserts on appeal that his comment to the detective was made in response to a hypothetical. However, this is not accurate. The admission was made while an officer was simulating labial penetration using his fingers to illustrate, but the testimony was that, based on

the illustration, defendant admitted to penetration of the labia. Viewing this admission in the light most favorable to the prosecution as we must, *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004), we conclude there was sufficient evidence of penetration.

Regarding the second count, defendant asserts that there was insufficient evidence of an assault because other witnesses did not substantiate the complainant's testimony about grabbing his her and forcing her into the bedroom. Further, defendant notes that despite her testimony about defendant forcefully removing her clothes, Glenn Mansfield testified that when he entered the room she was already naked. However, the testimony of a victim involving a crime under § 750.520g need not be corroborated. MCL 750.520h.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell